

Sample

Mark-to-Market **Form 10.6(b)** **Notification to Owner of Ineligibility as a Lite Based on *Initial Review*** **(Section 10-6A); Transmittal of Form for Re-election under Housing** **Notice H 99-36**

From: PAE

To: Owner

Transmission: Overnight Hard Copy

(date)

Project Name: _____

FHA Number: _____

Section 8 HAP Contract Number: _____

REMS ID Number: _____

Dear Owner:

This letter confirms the information provided to you [by telephone call, in our meeting] of [insert date]. You requested processing of the subject transaction as a Lite (rent restructuring without debt restructuring), under Housing Notice H 99-36 (or prior or subsequent notices). Based on our review of your current rents and expenses, we have concluded that this transaction cannot be approved as a Lite. Our calculation is based on the following current contract rents:

1BR \$ _____

2BR \$ _____

3BR \$ _____

4BR \$ _____

[Insert other unit sizes if necessary]

With these rents and your [1999 or other] expenses, we conclude that the Debt Service Coverage Ratio (DSCR) would be [Insert DSCR], which makes the property ineligible as a Lite. When we determine market rents, which we expect to be lower than the current rents, the DSCR of existing debt would be even lower.

In order to maintain the Section 8 HAP Contract and a financially sound property with OMHAR-approved market rents, you need to elect processing as a Full Debt Restructuring. We have enclosed the H 99-36 election form for your convenience.

If you choose to execute a revised election, please send the original to:

HUD Project Manager
Address

Address

Please also send a copy to us, so that we can begin processing your transaction as a Full Debt Restructuring as soon as possible.

APPEAL PROCESS: If you believe that the transaction can be approved as a Lite, you have 20 business days from the date of this notification to submit your appeal with clear and convincing supporting documentation to:

OMHAR Regional Office Director

Address

Address

A copy should also be sent to us.

Your appeal should specifically address your disagreement with these conclusions and indicate clearly how expenses or debt service can be reduced in order to make the property eligible as a Lite. The OMHAR Regional Office will review your appeal and respond within 30 calendar days. If the appeal affirms that your transaction cannot be approved as a Lite, you may then follow the procedures above and change your election.

If you do not change your election within 20 business days, or you do not appeal within 20 business days, or if you appeal and are notified that your appeal has been rejected and you do not change your election in 5 business days thereafter, we will complete the determination of comparable market rents and a new, revised Section 8 HAP Contract will be sent to you for execution which reflects these market rents. HUD may elect to renew the contract at these rents but reserves the right to issue tenant-based assistance (vouchers) to the tenants in the property in the face of immediate questions of viability. If tenant-based assistance to the tenants is required, the HUD Project Manager will provide you with a short-term renewal in order to comply with the one-year notice requirements to tenants and/or to provide sufficient time to process tenant vouchers. If the contract is renewed, you will be placed on a special watch list going forward. As a result, special inspections or monthly submissions of financial statements may be required. In any case, HUD's execution of the contract is conditioned upon the availability of funds.

If you have any questions about this transaction, please do not hesitate to contact [insert PAE contact name] at [insert phone].

Sincerely,

PAE

cc: HUD Project Manager
Section 8 Contract Administrator
OMHAR Regional Office

Enclosed: H 99-36 Election Form

Appeal Guidance

For owners who intend to appeal:

The PAE has prepared substantial information to support their conclusions on rents, expenses and other aspects of the transaction. Your appeal should include specific information that either (1) refutes the information used by the PAE or (2) provides additional or alternative information that supports the change you desire.

Be specific

Owners should identify the specific points being appealed. It is very difficult for OMHAR to address issues identified only as “expenses are too low” or “rents are about \$30 less than they should be”. For example, identify the specific expense line items at issue.

Be precise

Identify the real issue. If you believe that the real problem is that the expenses are not realistic, focus on the expenses. Don’t focus attention on rents (“rents need to be a little higher to cover the expenses and make the property viable”) unless you believe that the market rent conclusion is inadequate. If market rents will not cover realistic expenses, there are usually options in M2M to address this circumstance where warranted. The important thing is getting the expenses “right”.

Provide specific support

Provide specific and verifiable support for appeal issues. The easiest examples are increases in taxes or insurance where invoices and individual contacts for verification can be provided. Where more complex issues are involved, providing specific information from several sources is the most helpful. For example, where the market rent determination is at issue, provide specific rent comps, with addresses and distances from the subject, and as much detailed information as you can regarding the features of these comps. Another example might include expense information from an owners’ association or other sources that the PAE and OMHAR might not have been aware of.

Identify any deficiencies

In addition to providing new information, owners should be familiar with the information that the PAEs have used to reach their conclusions on rents and expenses and should indicate where there are any deficiencies in that material. For example, the owner should identify any inadequate or inappropriate rent adjustments to the comps used by the PAE or its appraiser, or point out that a comp that was used is actually inappropriate because it is subsidized.

History alone is not adequate

Indicating that a particular expense has always been high in this property is not, in and of itself, adequate evidence that it should continue to be high. One of the goals of the M2M program is to reduce high expenses due to inefficient management. For example, an identity of interest security entity may have been employed for years that charges higher than market fees for such services. In this case, the expense should be lowered to market. The expense should also be lowered if the cause of the high cost will be changed (for example, by switching to tenant-paid utilities). However, if the expense is high

because of some feature that is particular to this property (such as the need to spend additional money on flood insurance), that feature should be specifically identified and the expense supported.

Up to date information

It is most useful to all parties if the information being used is as current as possible. For example, information on recent utilities increases (letters from utility providers, newspaper articles, contacts at utility companies) should be provided as soon as possible.